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Allen Stein

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EXAMINER

NEWTON, JARED W

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/829,552 | Applicant(s) STEIN, ALLEN | |
| | Examiner Jared W. Newton | Art Unit 3634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final rejection is in reply to the remarks filed March 21, 2006, by which claims 1, 11, and 16 were amended. Claims 1-20 are pending.

Claim Rejections - 35 USC § 102

Claims 1-4, 10-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. Des. 249,000 to Simmons.

In regard to claim 1, Simmons discloses a display device comprising: a rack comprising a fixed body panel; a plurality of display panels detachably mounted to said rack, at least one of said panels being a hinged panel pivotally movable between a first position overlying a portion of another of said plurality of panels, and a second position not overlying the other panel, each of said plurality of panels comprising a free edge distal said rack, wherein the free edge of each of the plurality of display panels extends beyond the free edges of any overlying panels when the panels are in the first position (see FIG. 2); and each of said plurality of display panels having a material sample displayed thereon, each said material sample extending to the free edge of the panel it is mounted on (see FIG. 1).

In regard to claim 2, Simmons further discloses each of said plurality of display panels as mounted to the rack at a position horizontally offset from an adjacent one of the plurality of display panels (see FIG. 1).

In regard to claim 3, Simmons further discloses each of said plurality of display panels being wider than an adjacent overlying one of the plurality of display panels. As

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shown in Figure 2, Simmons discloses four display panels disposed between two opposing storyboard end members. As shown, the leftmost and rightmost members are wider (width being measured from the rack end to the distal end of said members) than the overlying innermost members disposed between said leftmost and rightmost members.

In regard to claim 4, Simmons further discloses the size of the material samples increasing with the respective size of the display panels (see FIG. 1).

In regard to claim 10, Simmons further discloses a first plurality of display panels mounted to a first side of said rack, and a second plurality of display panels mounted to a second side of said rack (see FIG. 1).

In regard to claim 11, Simmons discloses a display device comprising: a rack having a base at the bottom of said rack, a body panel extending generally upright from said base, and a story-board extending laterally from said body panel; and an array of display panels mounted to said rack and overlying a portion of the story-board such that said story-board is only partially visible behind the array of display panels to an observer positioned in front of the display device with the array of display panels between the observer and the story-board (see FIG. 1).

In regard to claim 12, Simmons further discloses each of the display panels of said array being hingedly mounted to the rack, whereby the display panels can be pivotally moved between a first position supported against said story-board and a second position wherein substantially the entire story-board is visible (see FIG. 1).

In regard to claim 13, Simmons further discloses each of the display panels of said array having a free edge distal said rack and a material sample mounted thereon, the material sample extending substantially to the free edge of the panel.

In regard to claim 14, Simmons further discloses the rack having a first storyboard extending laterally from a first side (left-hand side) thereof, and a second storyboard extending laterally from a second side (right-hand side) thereof (see FIG. 1).

In regard to claim 15, Simmons further discloses said device comprising a first array of display panels mounted to said rack and overlying a portion of the first storyboard such that said first storyboard is only partially visible behind the first array of display panels, and a second array of display panels mounted to said rack and overlying a portion of the second storyboard such that said second storyboard is only partially visible behind the second array of display panels (see FIG. 1).

In regard to claim 16, Simmons discloses a display device comprising a first array of display panels pivotally mounted to a first side of a rack, and a second array of display panels pivotally mounted to a second side of the rack, wherein underlying display panels of each of the first and second arrays have free edges with material samples thereon extending beyond free edges of overlying display panels, and wherein storyboard portions of the rack are partially visible behind each of the first and second arrays of display panels (see FIG. 1).

In regard to claim 17, Simmons discloses the display device of claim 16, said device further comprising underlying display panels of each of the first and second arrays being progressively wider than adjacent overlying display panels (see FIG. 2).

In regard to claim 19, Simmons further discloses each display panel being pivotally mounted to the rack at a position horizontally offset from an adjacent display panel (see FIGS. 1 and 2).

Claim Rejections - 35 USC § 103

Claims 5, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claims 1, 11, and 16 above, alone.

In regard to claims 5 and 20, Simmons discloses a device comprising the limitations of claim 1, but does not disclose the size of said material samples increasing with the cost of said material. Simmons shows some panels supporting larger samples of materials than others. The examiner takes official notice that it would have been obvious to one of ordinary skill in the art at the time of the invention that the larger samples would cost more than the smaller samples. Therefore, Simmons shows the size of material samples increasing with the cost of the materials displayed.

In regard to claim 18, Simmons discloses the device comprising all of the limitations of claim 17, and further discloses underlying display panels of the first (left-hand side) array being progressively taller than adjacent overlying display panels, but does not disclose the same for the second array of display panels. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the configuration of the first array of panels as disclosed by Simmons on the second array of panels. Said configuration is obvious and known in light of the teachings of Simmons,

and it is within the scope of the invention to Simmons to provide both sides of said display device with said configuration.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 5,715,949 to Rutledge. Simmons discloses a device comprising all of the limitations of claim 1, but does not disclose said sample material comprising a floor covering material, or more specifically, carpeting. Rutledge discloses a sample display rack, wherein said samples are floor covering samples, and more specifically, carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention to display floor coverings or carpet as disclosed by Rutledge on the rack as disclosed by Simmons. It is well known in the art of display devices comprising pivotally attached samples, such as those disclosed by Simmons and Rutledge, to utilize said devices for displaying carpet samples as disclosed by Rutledge, therefore It would have been obvious to one of ordinary skill in the art at the time of the invention to display carpet samples on the device as disclosed by Simmons. It is within the scope of the invention as disclosed by Simmons to store carpet samples on said display panels. The racks to Simmons and Rutledge are of similar construction, and it is within the scope of both inventions to store any type of displayed merchandise capable of hanging from a display panel, including carpet, jewelry, wallpaper, posters, tile, and clothing.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 3,777,896 to Ehrlich. Simmons discloses a device comprising all of the limitations of claim 1, but

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does not disclose said sample material comprising a wall covering material. Ehrlich discloses a sample display rack, wherein said samples are wall covering samples, and more specifically, posters. It would have been obvious to one of ordinary skill in the art at the time of the invention to display wall coverings as disclosed by Ehrlich on the rack as disclosed by Simmons. It is well known in the art of display devices comprising pivotally attached samples, such as those disclosed by Simmons and Ehrlich, to utilize said devices for displaying wall coverings as disclosed by Ehrlich, therefore It would have been obvious to one of ordinary skill in the art at the time of the invention to display wall coverings on the device as disclosed by Simmons. It is within the scope of the invention as disclosed by Simmons to store wall coverings on said display panels. The racks to Simmons and Ehrlich are of similar construction, and it is within the scope of both inventions to store any type of displayed merchandise capable of hanging from a display panel, including carpet, jewelry, wallpaper, posters, tile, and clothing.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 3,079,725 to La Fleur. Simmons discloses a device comprising all of the limitations of claim 1 as set forth above, and further discloses said device comprising a storyboard extending at least partially beyond peripheral edges of the plurality of display panels. Simmons does not disclose said storyboard displaying information. La Fleur discloses a catalog display 20 comprising display pages 43 overlying a display panel 42, said display further comprising a storyboard 40 displaying information regarding said catalog display (see FIG. 1). It would have been obvious to one of ordinary skill in the art at the time of the

invention to include advertising information, such as sample price, as disclosed by La Fleur, on the storyboard of the device as disclosed by Simmons. The motivation for including said information would be to promote the items being displayed, as is disclosed by La Fleur (see Column 1, Line 35).

Response to Arguments

Applicant's Remarks with respect to the 35 U.S.C. 112 2nd Paragraph rejections in the Office Action mailed December 23, 2005, have been fully considered and are persuasive. The rejection of claims 1, 4-8, 13, 16, and 20 under 35 U.S.C. 112 2nd Paragraph has been withdrawn.

Applicant's remarks with respect to the 35 U.S.C. 102 and 103 rejections, filed March 21, 2006, have been fully considered but they are not persuasive. The Examiner has included Examiner Figures 1E-3E below as a reference for clarification.

With respect to Simmons reference (US Des. 249,000), the Applicant recites, "Simmons does not disclose or suggest hinged panels that are pivotally movable" (see Pg. 6, Para. 3). On the contrary, Simmons discloses a display stand comprising a plurality of panels; and further suggests that said panels are hingedly attached to said stand via a pin-and-slot arrangement as best seen in Figures 1 and 4 to Simmons, and Figures 1E and 2E below. Simmons clearly shows pins (see FIG. 2E) which are inserted into the parallelepiped members extending from the front wall of the base member. The

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slot and pin arrangement is a single point of contact, suggesting a hinged relationship.

Further, it is well known in the art of multi-panel display apparatuses to hingedly attach the panel components to the base, in order to allow a prospective buyer of to view merchandise on both sides of the panels. Such an arrangement is shown in US Patent No. 3,391,796 to Cross. Simmons suggests the desire to view both sides of the panel, by showing material samples (see FIG. 1E) on both sides (see FIG. 3, Simmons).

Further, the Applicant states, "Simmons discloses a display stand for jewelry chain having six apparently fixed panels equally spaced apart from one another" (see Pg. 6, Para. 3). The Examiner fails to understand how one would draw the conclusion that the panels are "apparently fixed" to the stand as set forth by Simmons. If the panels as shown were fixed to the stand, the Simmons reference would require showing screws, or some other fixed attachment mechanism other than the suggested pin-and-slot attachment between the panels and the stand. The shown engagement suggests a single point of contact. A fixed single point of contact engagement would have to be accomplished by some type of adhesive agent, which would be counterintuitive because an adhesive is more effective over a large surface area than it is over a small surface area (i.e. the top of the pin shown in Figures 4 (Simmons) and 2E).

The Applicant further recites, "Simmons does not teach the mounting of any material sample on the panels..." (Pg. 6, Para. 4). Simmons discloses a display stand intended to support jewelry, as suggested by the title. Being a Design Patent, the Simmons reference does not explicitly state that the invention comprises mounted material samples. However, the Simmons reference meets the limitations of the claims

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in that it shows a display stand comprising a plurality of panels, on which some samples of some material (shown as the shaded parallelepipeds—see FIG. 1E below) are mounted. The Applicant relies on the general and vague terms “material” and “sample” to define the present invention. Any fabric, tile, sheet, paper, wood, plastic, or metal can be considered a “material”, and any smaller portion of a larger whole is a “sample”. The samples of material shown by Simmons are most likely a soft fabric on which jewelry is to be displayed, which is a well-known use in the art for preventing scratching of and damage to fragile pieces of metal jewelry. Whether or not the above stated assumption is the intended use of the material samples shown by Simmons does not take away from the fact that some samples of some material are shown. The intended use of the display stand of Simmons does not detract from the fact that some sample of some material is shown, and hindsight reconstruction is not necessary to see that material samples are shown. Further, with respect to claims 6 and 8, the material samples shown by Simmons are capable of covering a floor or a wall. Again, the general terms “floor covering” and “wall covering” are met by the Simmons reference, because the material shown is surely capable of covering either a floor or a wall.

Applicant further recites, “each material sample extends ‘to the free edge of the panel it is mounted on’” (see Pg. 7, Para. 2). The general term “edge” is relied upon to define the invention. The term “edge” was interpreted in view of the Drawings to mean the area of the panels more towards the distal end of said panels than towards a vertical centerline of said panels. In Applicant’s elected Figure 1, the panel 14b’ clearly shows a material sample extending to a point between a vertical centerline of said panel and the

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distal-most end of the panel (i.e. a gap exists where the panel underlies the material sample). The lateral width of the panel extends further from the rack than does the material sample, however, the material sample is still considered to extend to a free "edge". Similarly, Simmons shows the material sample as set forth above extending to a free "edge" of the panels, by extending to a point on said panels between a center vertical line, and a distal-most end of said panel (see FIG. 1E). Similar to the present invention, the lateral width of the panel to Simmons extends further from the rack than does the material sample, however, the material sample is still considered to extend to a free "edge". Further, the general term, "substantially" is relied upon (see Clm. 13, Ln. 3). Applicant's Remarks state, "section C [of the Applicant's interpretation of Figure 1 of Simmons] extends only to about 90% of the width of underlying panel A" (see Pg. 8, Para. 1). It is well within reason to consider 90% a substantial percentage.

In regard to claim 11, the Applicant states, "No such story-board is present in the display stand shown in Simmons" (see Pg. 8, Para. 3). On the contrary, the storyboard portion of the stand as shown by Simmons is distinguishable from the four display panels as shown by Simmons, in that it extends directly from and is integrally connected to the base of the stand, whereas the panels are not connected to the base (see FIG. 3E). The storyboard portions extend laterally, or from either side of the body portion, and are only partially visible behind the array of display panels as shown in Figure 1 (Simmons).

In regard to claim 16, for reasons set forth above, the rejection under 35 U.S.C. 102 is maintained.

In regard to claims 6-9, for reasons set forth above, the rejections under 35 U.S.C. 103 are maintained.

In regard to claims 3 and 17, Applicant recites, "In Simmons, all of the panels are the same width" (see Pg. 9, Para. 2). On the contrary, the 1st and 4th panels (from the left of Figure 1 (Simmons)) are shown as having wider widths than the 2nd and 3rd panels. Referring more particularly to Figure 3E, which shows a bottom plan view of the stand to Simmons, the width "Width 1" is wider than the width "Width 2" by about 5-10%. The claims do not set forth a reference to how much wider the underlying panel is than the overlying panel, only that, "underlying display panels of each of the first and second arrays are progressively wider than adjacent overlying display panels" (see Clm. 17, Ln. 1-2). Simmons shows this relationship as set forth above.

In regard to claims 5, 18, and 20, the rejections under 35 U.S.C. 103 are maintained. In particular, with regard to claims 5 and 20, it is well known and obvious that a larger portion of a certain material will under almost any circumstance, cost less than a smaller portion of the same material. That said, the larger material sample shown on the 1st panel (from the left side of Figure 1E) of the stand to Simmons will undoubtedly cost more than the smaller material sample shown on the 2nd panel (from the left side of Figure 1E).

In regard to claim 18, as previously stated, Simmons shows the claimed arrangement on the left hand side of the Stand, but not the right (as viewed in Figure 1E). What is well known by Simmons on one side of the stand is certainly applicable to the other side of the stand, and would be an obvious variation of his invention.

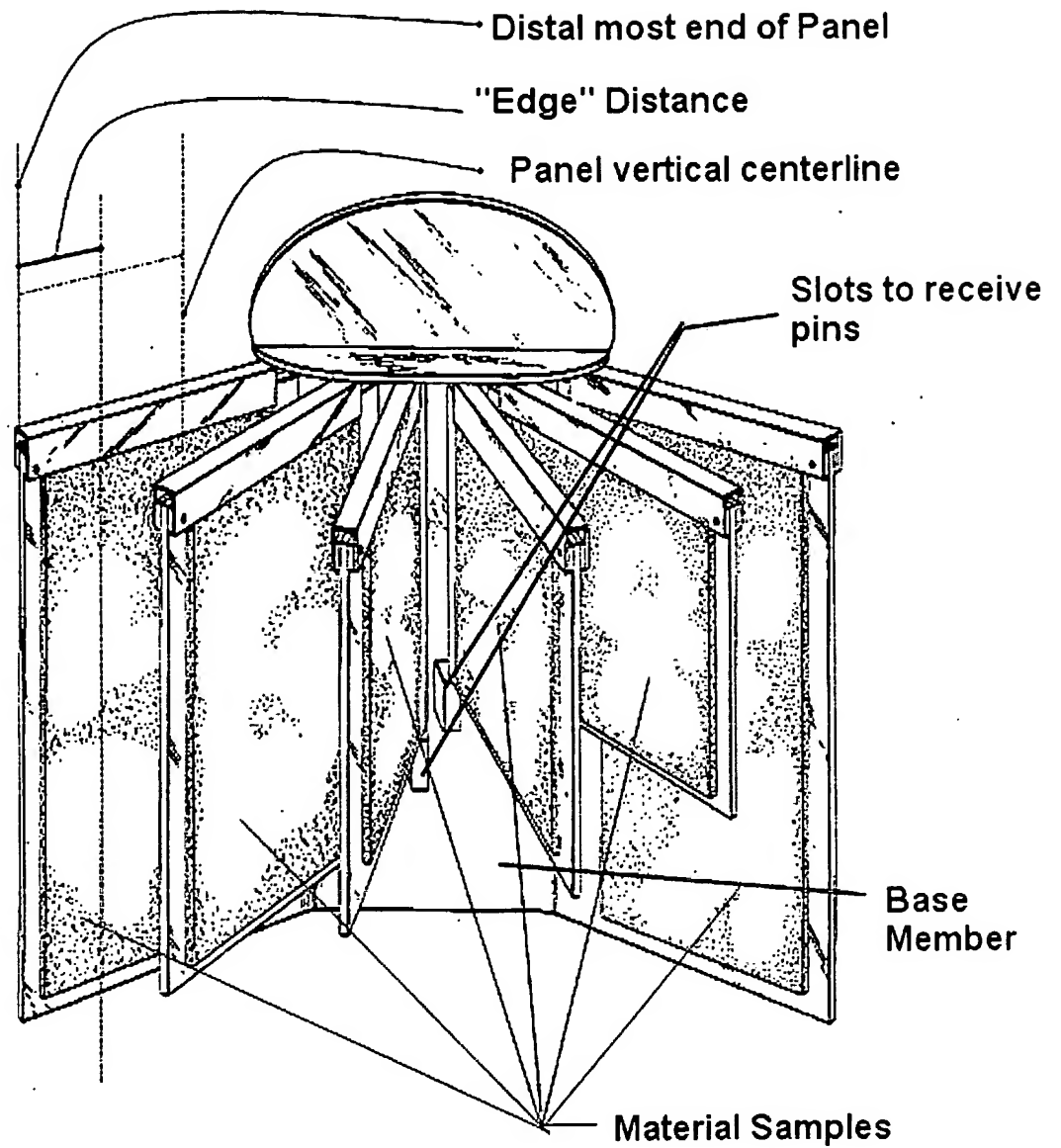


FIGURE 1E. Examiner's Figure

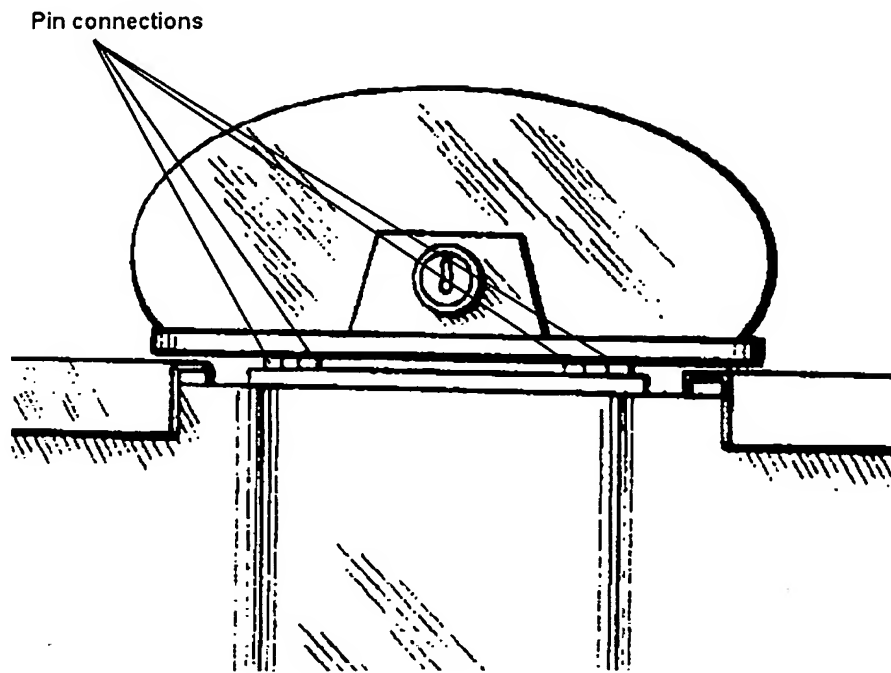


FIGURE 2E. Close up of FIG. 4 (Simmons)

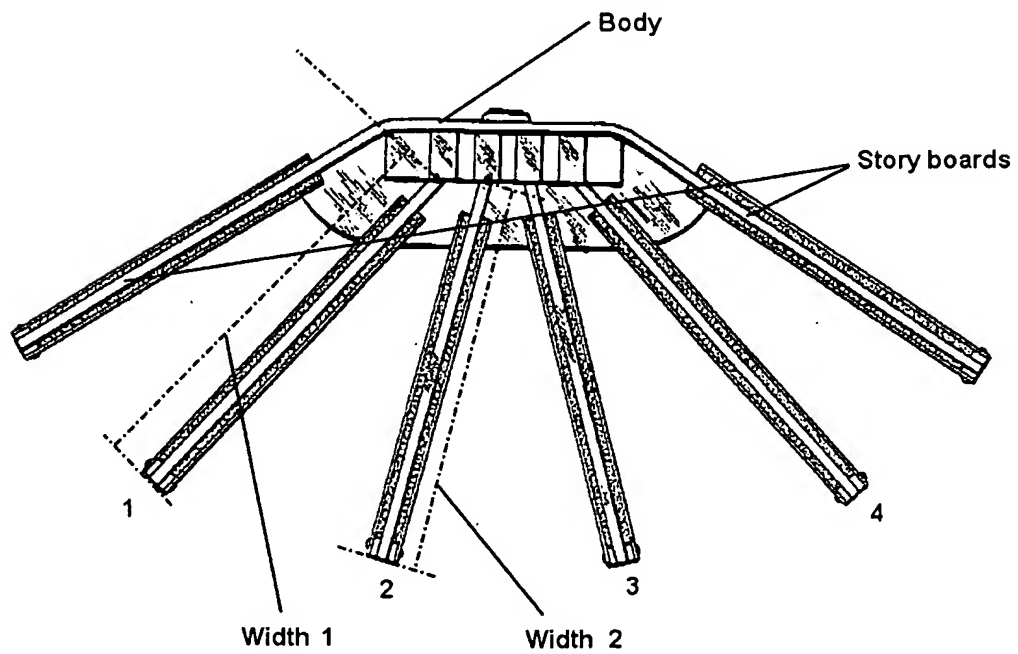


FIGURE 3E. Bottom View of FIG. 3 (Simmons)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

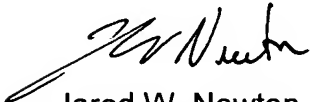
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jared W. Newton
May 19, 2006
JWN



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SUPERVISORY PATENT EXAMINER